IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	1:16-mj-01207-BMK-1
	)	
Plaintiff,	)	Honolulu, Hawaii
	)	January 6, 2017
vs.	)	
	)	DETENTION HEARING
TODD VASSEY,	)	
	)	
Defendant.	)	
	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BARRY M. KURREN
UNITED STATES DISTRICT MAGISTRATE JUDGE

APPEARANCES:

For the Government: JILL A. OTAKE
Office of the United States Attorney
PJKK Federal Building
300 Ala Moana Boulevard, Suite 6100
Honolulu, Hawaii 96850

For the Defendant: SALINA KANAI ALTHOF
Office of the Federal Public Defender
PJKK Federal Building
300 Ala Moana Boulevard, Suite 7104
Honolulu, Hawaii 96850

Also Present: DAVID K. KAHUNAHANA
U.S. Pretrial Services Officer

Official Court Transcriber: Debra Read, CSR CRR RMR RDR
United States District Court
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
readit3949@gmail.com

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FRIDAY, OCTOBER 7, 2016 11:30 A.M.

THE COURTROOM MANAGER: Magistrate Judge number 16-1207-BMK, United States of America versus Ted -- Todd Vassey.

This hearing has been called on a detention hearing.

Counsel, appearances for the record, please.

MS. OTAKE: Good morning, Your Honor.

Jill Otake for the United States.

THE COURT: Good morning, counsel.

MS. ALTHOF: Good morning, Your Honor.

Salina Althof for Mr. Vassey. He's present

THE COURT: And good morning to both of you.

So we're here for the detention hearing, and I have reviewed the motion and a Pretrial Services report and recommendation and addendum.

Maybe I'll ask you first, Ms. Althof, your position on this.

MS. ALTHOF: We are asking for release, Your Honor. I think in this instance it's important to start with the premise that this does not appear to be a presumption case. So if it's not a presumption case, under the Bail Reform Act then liberty should really be the norm, not detention, and the issue is under what restrictive conditions the person should be released.

In citing both dangerousness and flight risk, the government seems to rely heavily upon the indictment because of the nature of the charge, and there's a reason under the Bail Reform Act that that should -- is one of the factors that should be of least concern -- I shouldn't say concern -- it's of the least weight to the Court for several reasons.

One, he's presumed innocent.

Number 2, at this point we have nothing more than a bare indictment. The defense is at a serious disadvantage. It's not like we can refute anything that's in there. We have no knowledge of what he's facing or what evidence the government has.

And so to rely so heavily upon the indictment is -- and what they claim may be the weight of the evidence is -- is really inherently unfair, and I think that's why under the Bail Reform Act the weight of the evidence is the factor that is the least important.

In terms of dangerousness, I see nothing in Mr. Vassey's record to suggest that he is a danger to the community. He has a criminal record, but it's very dated. There's certainly nothing in there that suggests any sort of danger. Even if you do consider the nature of the allegations in the indictment, he himself is not alleged to have used coercion or force upon these victims. He's considered -- according to the indictment, he's considered a runner.

THE COURT: Right.

MS. ALTHOF: So the runner basically just means he escorts. Again, he's presumed innocent --

THE COURT: Understood.

MS. ALTHOF: -- you know, but the allegations themselves do not involve any sort of force or coercion or anything like that. So any dangerousness is certainly not coming from the indictment itself.

In terms of his -- in terms of a flight risk, I would similarly argue there's nothing in Mr. Vassey's background that shows he is a serious risk of flight. It can't just be a risk of flight; it needs to be a serious risk of flight.

Yes, Mr. Vassey has traveled internationally extensively. His criminal history, however, does not show that there is a history of contempts of courts or failures to appear. He does have ties here.

The bail report says his employment is not here. That's incorrect. His employment has been here.

He's a U.S. citizen. His mother's in California. His sister is in Colorado. He's certainly close to them. The bail report indicates that he actually went to California at one point to take care of his mother.

THE COURT: Right.

MS. ALTHOF: We know that for the past several years he has been in Texas taking care of his ailing father until he passed away, so he's got extensive ties to the United States.

And his travel seems to be -- it's not like he owns a home abroad or can speak the language or anything like that.

THE COURT: You'd agree he has traveled extensively even recently, though, right?

MS. ALTHOF: I do. I absolutely agree. But I think the issue doesn't end there.

While travel may be considered a factor under whether someone is a serious risk of flight, then the question becomes, well, what can we do to curtail that risk? And I have not heard anything yet from the government or from Pretrial Services why conditions can't be placed to curtail that flight of risk. We can do that by taking away his passport. We can do that by putting him on home detention or location monitoring.

In fact, one of the co-defendants in the case, John -- John Zbaracki, he was released in the District of Minnesota on very similar conditions, unsecured bond, home detention, location monitoring, a passport taken away. And, you know, I don't pretend to know the circumstances of his case, but it's clear from the indictment that he is either a runner or a facilitator, same sort of role as Mr. Vassey is to have been -- is alleged to have been. He's not a boss or trafficker or anything like that.

THE COURT: Right.

MS. ALTHOF: I do take issue with the government's motion to detain -- bail. They do check off that he's a serious risk of obstruction of justice, and that's on page 3 of their motion to detain without bail, letter N, as in Nancy.

And I'm concerned about that allegation, and maybe I shouldn't be, but at this point I see nothing -- no concrete evidence that he poses some serious risk that he's going to essentially tamper with a witness. As I said, I'm at a disadvantage; I don't know everything the government knows. But I would like to know what evidence they have that proves not just hypothetically he could do this, probably he could do this, but what evidence they have concretely that he poses a serious risk of tampering with the witness.

So I don't think the government has met its burden on either flight risk or danger. Even if they have, I would like to hear how the conditions I propose cannot address the serious risk of flight which I think is probably the bigger concern here to the Court.

THE COURT: I have an equal concern with the alleged victims in the case, so I am concerned about the danger to them. And I understand these are just allegations at this point and I understand his role is alleged to have just been a runner, but when I consider dangerousness to the community, it's the alleged victims in this alleged scheme that I'm concerned about.

MS. ALTHOF: I understand that. Could I address that, Your Honor?

THE COURT: Yes. Please do.

MS. ALTHOF: And again, I don't know where the victims all reside. It appears it's probably in Minnesota, but I can't be sure, or other mainland cities.

THE COURT: Yeah. I read it as nationwide.

MS. ALTHOF: Right. I don't think there are any here, though. I could be wrong, but I don't get any indication that any are here, and this is presumably where he would be residing if he were released to fly to Minnesota. So -- and, you know, obviously travel restrictions would be in place. This person that I referred to, Zbaracki, he has a no-contact order with not only any victims, but any witnesses, any other co-defendants.

THE COURT: Sure.

MS. ALTHOF: And if Mr. Vassey is on home detention and under location monitoring, I believe that that would alleviate any risk of dangerousness.

THE COURT: Okay. Thank you.

MS. ALTHOF: Thank you.

THE COURT: Ms. Otake.

MS. OTAKE: Thank you, Your Honor.

To clarify a couple of points, our primary argument is not the weight of the indictment, and I'd agree with Ms. Althof that the case law suggests that that's the least important factor.

Our -- we have two primary concerns. The first is flight risk and the second is witness tampering, and the third is dangerousness to the community, like Your Honor stated.

The reason why he's a flight risk is he's now facing a 15-year mandatory minimum sentence on Count 1. That presents, I think, a reason for him to flee. He has traveled internationally I counted 39 round trips between here or the mainland and Asia since 2003. He admits that he's lived off and on in Thailand. He has no real ties here. He doesn't currently have a job here. He doesn't have family here.

He -- significantly, to me, nobody who Pretrial Services contacted was willing to serve either as a placement for him or as a third-party custodian for him. I don't see a reason why if we were going to release him, we would release him under circumstances where he's basically unfettered.

He also does have a history of substance abuse issues, Your Honor.

With regard to the witness tampering --

THE COURT: Not recent history, though. You would agree with that?

MS. OTAKE: I believe he had an arrest in 2010, if I remember correctly.

THE COURT: But --

MS. OTAKE: It depends on your definition of recent.

THE COURT: Fair enough. Fair enough, counsel.

MS. OTAKE: With regard to witness tampering, my understanding -- and Ms. Althof corrected me on this -- is I thought that all the other defendants in this case were detained. What I do know is that he does have close ties to the ring leader in this case as well as numerous co-defendants in Atlanta, and at this point he's the most obvious person who would be able to contact victims, witnesses, and unindicted co-conspirators in Thailand.

I did speak with the AUSA assigned to this case in Minnesota. She told me that there are those individuals in Thailand. He does have connections to Thailand. And while Ms. Althof speaks of the fact that we could take his passport and restrict his travel, the reality is is that restricting somebody's travel doesn't restrict their communication. He can call any of those people at any time on the phone.

I think at this point he's just too big of a risk and there are no combination of conditions that would secure his appearance.

Of course, if he gets to Minnesota, the magistrate judge there can decide what to do in their case, but I think under these circumstances it makes sense to detain him, send him to Minnesota, and let Minnesota decide what the next step is.

THE COURT: Okay.

MS. OTAKE: Thank you.

THE COURT: Thank you, counsel.

I -- you know, as I said, I've reviewed the motion and the Pretrial Services report and recommendation, and based upon the information in the report and the arguments of counsel this morning, I do find that there are no -- or that there are presently no conditions the court can impose to negate the flight risk or danger to the community posed by the defendant.

I think the defendant is free to re-raise this issue in Minnesota at a later date, but presently I don't think he can -- as I said, I don't think there are such conditions available.

The court, therefore, orders that the defendant be detained pending trial in this case or further order from the court in Minnesota.

MS. ALTHOF: Is the Court willing to entertain at all any cash collateral? Would that change the Court's position, or not?

THE COURT: The -- the Pretrial Services report mentioned that and I was not persuaded by that under the circumstances, counsel.

MS. ALTHOF: Understood.

THE COURT: All right. Thank you.

MS. ALTHOF: Thank you.

THE COURT: Would you please prepare the order, Ms. Otake?

MS. OTAKE: Yes, Your Honor.

THE COURT: Thank you.

(Proceedings concluded at 10:52 a.m.)

TRANSCRIBER'S CERTIFICATE

I, DEBRA READ, court approved transcriber, United States District Court, District of Hawaii, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at Honolulu, Hawaii, January 6, 2017.

/s/ Debra Read

DEBRA READ, CSR CRR RMR RDR